

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

31590

FILE:

B-218640

DATE: June 28, 1985

MATTER OF:

Prince George's Contractors, Inc.

DIGEST:

GAO will not consider a protest where the issues presented are before a court of competent jurisdiction, despite the court's indication that it is willing to consider an advisory GAO decision. The court has also indicated that it intends to rule on the merits in advance of the date when it can be reasonably expected that GAO will be in a position to issue a decision, given the statutory time period for the agency to file its report on the protest and for the parties to comment on that report.

Prince George's Contractors, Inc. protests award to Chemung Contracting Corporation under invitation for bids No. DTFA-15-85-B-10010, issued by the Federal Aviation Administration (FAA) for the rehabilitation of ramp taxiways at Washington, D.C. National Airport. Prince George's contends that award was improper because the FAA had the intention, before award, of significantly modifying the contract; according to the protester, this occurred on the day after award, thereby denying other bidders the opportunity to bid on the basis of the contract as awarded.

We will not consider the protest.

Prince George's filed its protest with our Office on May 24, 1985. Prince George's subsequently filed suit in the U.S. District Court for the District of Columbia, Prince George's Contractors, Inc. v. Donald D. Engen, Administrator, et al. (Civil Action No. 85-607), seeking injunctive relief. As a part of that proceeding, Prince George's obtained an order on June 13 requesting an advisory opinion from our Office prior to the date scheduled for the hearing on the preliminary injunction, June 26, or as soon thereafter as possible.

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By letter dated June 17, we informed the court that we were not in a position to provide an advisory opinion until such time as the agency report and the comments of the protester and interested parties had been received, enabling us to review a complete file and issue a decision. We suggested that if the court still desired our assistance, it should establish deadlines for submissions by the various parties to our proceeding consistent with the court's time requirements.

We also asked the FAA voluntarily to expedite the processing of its report on the protest, and we asked the other parties to the protest to agree to abbreviated times for preparing comments.^{1/} Only the protester voluntarily agreed to expedited processing of the bid protest.

The court, by letter of June 18, advised that, regretfully, it must proceed without benefit of our advisory opinion unless it is fortuitously issued earlier than expected. The court further advised that it intended to rule on Prince George's motion for a preliminary injunction by mid-July, and perhaps earlier.

The hearing was held on June 26 as scheduled with a representative of our Office in attendance. Our Office's role in the court's proceeding was not discussed at the hearing, and the possibility of expediting the proceedings before our Office, by mandating abbreviated filing schedules, was not considered by the court. Rather, the hearing, which took more than 5 hours, dealt with the propriety of the contract award and the other matters at issue. At the close of the hearing, the court reiterated its intent to rule on Prince George's motion by mid-July and perhaps earlier.

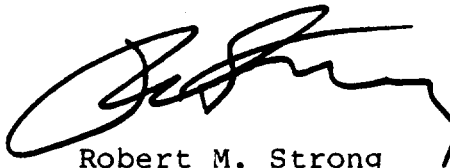
As noted above, Prince George's protest was filed here on May 24. In accord with the Competition in Contracting Act of 1984, 31 U.S.C.A. § 3553 (West Supp. 1985), we have requested a report from FAA that is due on July 2, 25 working days from the agency's receipt of notice of the protest. After that, under our Bid Protest Regulations, the protester and interested parties have 7 additional working days to comment upon the FAA report, that is, until the close of business, July 12. See 4 C.F.R. § 21.3.

^{1/} Because Prince George's did not request expedited processing within 3 days of filing its protest, its request is not for consideration under the express option provisions of our Bid Protest Regulations, 4 C.F.R. 21.8 (1985).

Consequently, it appears that the court will, in all likelihood, rule on the merits of the dispute before the issuance of a decision by our Office under even the most optimistic assumptions.

Our Bid Protest Regulations require the dismissal of any protest where the matter involved is the subject of litigation before a court of competent jurisdiction (unless the court requests a decision by the General Accounting Office) or where the matter involved has been decided by the court, 4 C.F.R. § 21.9, and it is the policy of our Office not to decide the protests that come within these guidelines. Pitney Bowes, Inc., B-218241, June 18, 1985, 85-1 CPD ¶ _____. Despite the court's stated willingness to consider a decision of this Office should one fortuitously be issued earlier than expected, there exists no reasonable expectation that a decision can be issued in time to assist the court, given the court's stated intent to rule on Prince George's motion by mid-July or earlier. Rather, there is every reason to believe that our Office's decision would only be issued after the court has decided the matter on the merits when, under the doctrine of res judicata, the court's resolution of the issues will bind this Office. We therefore see no purpose for further considering the protest.

Protest dismissed.

A handwritten signature in black ink, appearing to read 'R. M. Strong', with a large, sweeping initial 'R'.

Robert M. Strong
Deputy Associate
General Counsel